

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

WISCONSIN ENERGY CORPORATION,)
INTEGRYS ENERGY GROUP, INC.,)
PEOPLES ENERGY, LLC, THE PEOPLES)
GAS LIGHT AND COKE COMPANY,)
NORTH SHORE GAS COMPANY, ATC)
MANAGEMENT INC., and AMERICAN)
TRANSMISSION COMPANY LLC)

)
Application pursuant to Section 7-204 of the)
Public Utilities Act for authority to engage in a)
Reorganization, to enter into agreements with)
affiliated interests pursuant to Section 7-101, and)
for such other approvals as may be required)
under the Public Utilities Act to effectuate the)
Reorganization.)

Docket No. 14-0496

Surrebuttal Testimony of

SCOTT J. LAUBER

Vice President and Treasurer –
Wisconsin Energy Corporation

On Behalf of
Wisconsin Energy Corporation

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1 **I. INTRODUCTION AND BACKGROUND**

2 **A. Witness Identification**

3 **Q. Please state your name and business address.**

4 A. My name is Scott J. Lauber. My business address is Wisconsin Energy Corporation
5 (“Wisconsin Energy”), 231 West Michigan Street, Milwaukee, Wisconsin 53203.

6 **Q. Are you the same Scott J. Lauber who provided direct, supplemental direct, and**
7 **rebuttal testimony on behalf of Wisconsin Energy in this docket?**

8 A. Yes.

9 **B. Purpose of Surrebuttal Testimony**

10 **Q. What are the purposes of your surrebuttal testimony in this proceeding?**

11 A. My surrebuttal testimony responds to the rebuttal testimony of Illinois Commerce
12 Commission (“Commission” or “ICC”) Staff witnesses Eric Lounsberry, Daniel G.
13 Kahle, Dianna Hathhorn and Michael McNally, and City of Chicago (“City”) and
14 Citizens Utility Board (“CUB”) (collectively, “City/CUB”) witness Michael P. Gorman.

15 **C. Summary of Conclusions**

16 **Q. Please summarize the conclusions of your surrebuttal testimony.**

17 A. In my surrebuttal testimony, I conclude:

18 (1) In response to Staff witness Eric Lounsberry’s recommendation, the Joint
19 Applicants agree to increase the amount of their capital expenditures commitment for
20 North Shore from \$35 million to \$43 million for the period 2015-2017 as additional

21 support for the Commission finding that the proposed Reorganization meets the
22 requirements of Section 7-204(b)(1) of the Public Utilities Act (the “Act”).¹

23 (2) City/CUB witness Michael Gorman’s proposal that the Joint Applicants
24 commit to ring-fence protections for the capital investments of the Gas Companies with
25 respect to dividend payment obligations is unnecessary for the reasons expressed in the
26 surrebuttal testimony of Joint Applicants witness John Reed (Joint Applicants Ex. 17.0),
27 as well as the protections provided by the conditions agreed to in response to
28 recommendations by Staff witnesses Messrs. Lounsberry and McNally.

29 (3) The Joint Applicants agree with Staff witness Ms. Hathhorn’s approach to
30 updating the proposed WEC Energy Group Affiliated Interest Agreement (“AIA”) and
31 the record in this proceeding to reflect any changes approved by the Commission to the
32 existing Integrys AIA upon which it is based in Docket Nos. 12-0273/13-0612 (Consol.).

33 (4) The Joint Applicants continue to disagree with Staff witness
34 Mr. McNally’s conclusion that the Commission cannot make the finding required by
35 Section 7-204(b)(7) of the Act without imposing conditions on its approval of the
36 Reorganization. In a continuing effort to obtain Staff’s agreement that the requirements
37 of Section 7-204(b)(7) have been met, however, the Joint Applicants agree to accept
38 additional conditions designed to address Mr. McNally’s concerns.

39 (6) The Joint Applicants agree to the conditions recommended by Staff
40 witness Daniel Kahle regarding the treatment of transaction costs and transition costs,
41 with a clarification regarding the recovery of transition costs up to the extent they
42 produce savings.

¹ Unless otherwise indicated, capitalized terms in this surrebuttal testimony have the same meaning as in the witness’ direct and rebuttal testimony.

(7) The Joint Applicants continue to disagree that Section 9-230 is applicable to a proceeding under Section 7-204 of the Act for approval of a proposed reorganization. The Joint Applicants believe that the study recommended by Staff witness Mr. McNally is unnecessary, both because of the speculative nature of his concerns and the difference in circumstances between the present Reorganization and the changes brought on by legislative formula rates in the cases he cites. However, in order to compromise with Staff and narrow the issues in this proceeding, the Joint Applicants will agree to perform the study of the Gas Companies' capital structures prior to their next rate cases as recommended by Mr. McNally.

D. Itemized Attachments to Surrebuttal Testimony

Q. Are you sponsoring any exhibits with your surrebuttal testimony?

A. No.

II. SECTION 7-204(b)(1) AND CAPITAL EXPENDITURE COMMITMENTS

Q. In your rebuttal testimony, you proposed commitments by the Joint Applicants to make minimum capital expenditures of \$1 billion for Peoples Gas and \$35 million for North Shore during the 2015-2017 period in response to a recommendation by Staff witness Mr. Lounsberry that the Joint Applicants provide capital expenditure commitments in support of their claim that the proposed Reorganization meets the requirements of Section 7-204(b)(1) of the Act. What was Mr. Lounsberry's response?

A. Mr. Lounsberry found that the Joint Applicants' approach to making a three-year aggregate capital expenditure commitment for each of the Gas Companies was acceptable, and found that the \$1 billion capital expenditure commitment for Peoples Gas

during the 2015-2017 period was acceptable. However, Mr. Lounsberry explained that he found the \$35 million capital expenditure commitment for North Shore for this period to be too low, and recommended that it be increased to \$43 million. (See ICC Staff Ex. 9.0, at 21-25)

Q. What is the Joint Applicants' response to Mr. Lounsberry's recommendation to increase the capital expenditures commitment for North Shore to \$43 million for the 2015-2017 period?

A. In a continuing effort to narrow the issues and seek Staff's agreement that the Joint Applicants have met the requirements of Section 7-204, the Joint Applicants agree to increase their capital expenditure commitment for North Shore to \$43 million during the 2015-2017 period, and agree to the condition language proposed by Mr. Lounsberry (ICC Staff Ex. 9.0, at 25:611-615):

The Joint Applicants agree to make at least \$1 billion in capital expenditures for Peoples Gas and at least \$43 million in capital expenditures for North Shore during the 2015 through 2017 period. The Joint Applicants shall provide a running total of the Gas Companies' capital expenditures in their semi-annual compliance report to the Commission.

Q. In his rebuttal testimony, City/CUB witness Mr. Gorman continues to opine that the Commission should impose a ring-fence restriction on dividend payments to ensure that the Joint Applicants continue funding their capital expenditure programs before making dividend payments (City/CUB Ex. 8.0, at 7-15). Do you agree with Mr. Gorman's position?

A. No, I do not. The Joint Applicants respectfully continue to disagree that any ring-fence provisions are necessary to ensure that the Gas Companies continue to make sufficient

capital investments, particularly with respect to Peoples Gas' AMRP, for the reasons expressed in my rebuttal testimony and the rebuttal testimony of Joint Applicants witness Mr. Reed. Mr. Reed provides additional reasons why Mr. Gorman's requested ring-fence restriction is unnecessary in his surrebuttal testimony (Joint Applicants Ex. 17.0), as well. Further, I note that Mr. Gorman fails to address the argument in my rebuttal testimony as to why such a restriction is necessary in light of the multiple conditions already in place regarding capital expenditure commitments and commitments regarding the AMRP.

Q. Is there any further reason why Mr. Gorman's ring-fencing restriction is unnecessary?

A. Yes. As suggested by Staff witness Mr. McNally (ICC Staff Ex. 13.0, at 6:123-134), the Joint Applicants will agree to submitting reports published by the credit rating agencies concerning the WEC Energy Group and the Gas Companies in order to give the Commission notice of any deterioration in their creditworthiness so that the Commission could act in a timely manner under Section 7-103 of the Act. However, because the credit rating agencies issue numerous items and alerts regarding the utility industry generally that could be included in Mr. McNally's proposal, but only tangentially refer to WEC Energy Group or the Gas Companies, the Joint Applicants propose to limit this condition to providing only the annual credit reviews that focus on WEC Energy Group and the Gas Companies. Further, the Joint Applicants believe that 5 business days after publication is unreasonably short to require filing, and propose that these reports be filed within 10 business days of their publication, and in accordance with copyright requirements. Thus, the Joint Applicants propose the following language for a condition on this issue:

114 All annual credit reviews of the Gas Companies and WEC Energy Group
115 published by credit rating agencies shall be filed with the Commission in
116 this docket within 10 business days after being published, and in a manner
117 consistent with the requirements for publication imposed by the copyright
118 holders.

119 **III. SECTIONS 7-204(b)(2) AND 7-204(b)(3) – UPDATES TO AIA**

120 **Q. In your rebuttal testimony, you explained that the Joint Applicants agreed to Staff**
121 **witness Ms. Hathhorn’s plan to enable the Commission to make its findings**
122 **required by Sections 7-204(b)(2) and 7-204(b)(3) of the Act, but that outstanding**
123 **issues remain to be resolved in Docket Nos. 12-0273/13-0612 (Consol.) before**
124 **updates to the proposed WEC Energy Group AIA could be provided in this**
125 **proceeding. What was Ms. Hathhorn’s response to the Joint Applicants’ position?**

126 A. Ms. Hathhorn agreed with the Joint Applicants that it would be better to update the record
127 in this proceeding once the issues regarding the existing Integrys AIA are resolved in
128 Docket Nos. 12-0273/13-0612 (Consol.). (See ICC Staff Ex. 12.0, at 5-6) Based on the
129 Joint Applicants’ agreement that the proposed WEC Energy Group AIA will be updated
130 to reflect any changes to the Integrys AIA resulting from Docket Nos. 12-0273/13-0612
131 (Consol.), Ms. Hathhorn stated that she has no further concerns regarding this
132 recommendation. (*Id.* at 6)

133 **Q. Do the Joint Applicants agree with Ms. Hathhorn’s conclusions?**

134 A. Yes. Consistent with my rebuttal testimony, the Joint Applicants agree to accept the
135 conditions set forth in Ms. Hathhorn’s rebuttal testimony, and will update the record in
136 this proceeding once any changes to the Integrys AIA are approved by the Commission in
137 Docket Nos. 12-0273/13-0612 (Consol.).

138 **IV. AGREEMENT ON ADDITIONAL CONDITIONS FOR SECTION 7-204(b)(7)**

139 **Q. What are the requirements of Section 7-204(b)(7) under the Act?**

140 A. Section 7-204(b)(7) of the Act requires that before it can approve a proposed
141 reorganization, the Commission must find that “the proposed reorganization is not likely
142 to result in any adverse rate impacts on retail customers.”

143 **Q. In his direct testimony, Staff witness Mr. McNally’s recommended several**
144 **conditions to protect against “possible” adverse rate impacts on customers that**
145 **could result due to a credit downgrade of the WEC Energy Group or the Gas**
146 **Companies. While agreeing to several of Mr. McNally’s recommended conditions,**
147 **in your rebuttal testimony the Joint Applicants offered alternative language or**
148 **reasons why the remaining recommended conditions are not necessary. Has there**
149 **been any change in the Joint Applicants’ positions with respect to these remaining**
150 **conditions based on Mr. McNally’s rebuttal testimony?**

151 A. Yes. While the Joint Applicants respectfully continue to disagree with Mr. McNally that
152 these conditions are necessary to meet the requirements of Section 7-204(b)(7) for the
153 reasons I expressed in my rebuttal testimony, the Joint Applicants will attempt to address
154 Mr. McNally’s concerns with respect to the remaining conditions discussed in his rebuttal
155 testimony in order to narrow the issues and in a continuing effort to reach agreement with
156 Staff on the approval of the proposed Reorganization. I will address each of these
157 remaining recommended conditions below.

158 **Q. In his rebuttal testimony, Mr. McNally agrees with the amendment you proposed in**
159 **your rebuttal testimony to his proposed condition to require that Peoples Gas and**
160 **North Shore are to maintain separate credit facilities, not accessible to nor**

161 **influenced by non-utility affiliates, only to the extent that they existed prior to the**
162 **approval of the proposed Reorganization (ICC Staff Ex. 13.0, at 2:20-26). Do you**
163 **propose language for this condition to reflect this agreed amendment?**

164 A. Yes. Based on Mr. McNally's agreement, I recommend that the language of his proposed
165 condition be worded as follows:

166 Peoples Gas and North Shore are to maintain separate credit facilities to
167 the extent they existed prior to the entry of the final Order in this
168 proceeding approving the Reorganization, not accessible to nor influenced
169 by non-utility affiliates.

170 **Q. With respect to a condition regarding providing information to the Commission**
171 **concerning the WEC Energy Group's level of non-regulated operations and**
172 **indebtedness, Mr. McNally counter-proposes a condition that requires filing – either**
173 **six months before a rate case or on an annual basis – a report with this information**
174 **(Staff Ex. 13.0, at 2-3). Is this approach agreeable to the Joint Applicants?**

175 A. The Joint Applicants are agreeable to the approach of requiring a report on an annual
176 basis while a concern exists regarding the level of holding company debt. A similar
177 condition has been agreed to in the Wisconsin proceeding to address this concern. In
178 order to standardize as much as possible the multitude of reports and filings that WEC
179 Energy Group will be required to make in four state jurisdictions and the Federal Energy
180 Regulatory Commission, the Joint Applicants propose that the language from the
181 condition agreed to in Wisconsin be adopted by the Commission:

182 The WEC Energy Group shall file with the Commission, within 90 days
183 after the closing of the Reorganization, a report detailing the debt held at
184 the WEC Energy Group holding company and Integrys sub-holding
185 company levels, its relationship to total holding company debt and the
186 company's plans to reduce the debt, with updated reports to be filed
187 annually until the debt at the holding companies declines to 15% of total
188 debt.

189 This proposed condition should adequately address Mr. McNally's concerns.

190 **Q. Mr. McNally continues to insist that the Joint Applicants either be required to**
191 **register with the SEC or present a detailed study showing the costs and savings of**
192 **registration compared to remaining unregistered (Staff Ex. 13.0, at 3:53-66). Will**
193 **the Joint Applicants agree to perform a cost-benefit study on SEC registration as**
194 **recommended by Mr. McNally?**

195 A. Based on the information already provided in my supplemental direct testimony (Joint
196 Applicants Ex. 5.0, 4:82-90) and rebuttal testimony (Joint Applicants Ex. 7.0, at 17:360-
197 376), preparing a formal study of this issue seems an unnecessary exercise because debt-
198 issuances of less than \$250 million, such as those issued by the Gas Companies, do not
199 gain any advantage from SEC registration. Nevertheless, in an effort to narrow the issues
200 in this proceeding and in a continuing effort to reach agreement with Staff on the
201 approval of the proposed Reorganization, the Joint Applicants will agree to present a
202 study on this issue as requested by Mr. McNally. The Joint Applicants propose to present
203 this study within six months after the close of the Reorganization, and recommend the
204 following language for a condition on this issue:

205 Peoples Gas and North Shore shall present a detailed study within six
206 months after the close of the Reorganization showing the costs and
207 savings of U.S. Securities Exchange Commission registration compared to
208 remaining unregistered.

209 **V. TREATMENT OF TRANSITION COSTS AND SAVINGS (SECTION 7-204(c))**

210 **Q. In your rebuttal testimony, you provided definitions of "transition costs" and**
211 **"transaction costs." (Joint Applicants Ex. 7.0, at 19). Did Staff witness Mr. Kahle**
212 **agree with your definitions of these terms?**

213 A. Yes, he did. (*See* ICC Staff Ex. 11.0, at 4:70-71)

214 **Q. What conditions has Staff witness Mr. Kahle recommended with respect to the**
215 **treatment of transition costs and transaction costs resulting from the proposed**
216 **Reorganization?**

217 A. Mr. Kahle recommends two conditions with respect to transition costs and transaction
218 costs and, if they are adopted, he recommends that the Commission find the proposed
219 Reorganization to be in compliance with Section 7-204(c) of the Act:

220 In future rate cases, the Gas Companies shall identify all costs included in
221 the test period that result from accomplishing the Reorganization
222 (transaction costs) and demonstrate that such costs are not included in the
223 rate case for recovery.

224 The Gas Companies shall separately identify and track transaction costs
225 and transition costs.

226 (ICC Staff Ex. 11.0, at 5:92-97) Further, Mr. Kahle recommends that the Commission's
227 Order include the following directives on savings and cost recovery:

228 Allocation of any savings resulting from the proposed Reorganization
229 shall flow through to ratepayers.

230 Transaction costs incurred in accomplishing the proposed reorganization
231 shall not be recoverable from ratepayers.

232 Transition costs may be recoverable to the extent the transition costs
233 produce savings.

234 (*Id.*, at 5:105 – 6:113)

235 **Q. Do the Joint Applicants agree with the conditions and directives that Mr. Kahle**
236 **recommends in his rebuttal testimony?**

237 A. Yes, although I want to make a general clarification concerning transition costs and their
238 associated savings. Transition costs incurred by the Gas Companies or allocated to the

Gas Companies (the Gas Companies' portion or share of acquisition related transition costs) should be recoverable if they are associated with financial benefits that the Gas Companies' customers will receive as a result of the acquisition so long as the acquisition-related savings realized by the Gas Companies' customers are equal to or greater than their acquisition-related transition costs. This approach adequately protects customers against paying "front-loaded" transition costs that fail to result in corresponding savings. Further, I note that transition costs may be incurred to deliver qualitative benefits for customers and employees in the areas of safety, reliability, customer satisfaction and so forth. These benefits are somewhat difficult to quantify, but will need to be considered in future test years.

Q. Has City/CUB witness Mr. Gorman changed his position with respect to the treatment of transition costs in his rebuttal testimony?

A. Yes. As explained by Joint Applicants witness Mr. Reed in his surrebuttal testimony (Joint Applicants Ex. 17.0), Mr. Gorman now states that to the extent the Joint Applicants implement procedures that require them to incur costs that produce savings, the Joint Applicants should be allowed to recover the cost up to the level of savings created. (*See* City/CUB Ex. 8.0, at 5-7) Joint Applicants witness Mr. Reed thoroughly addresses Mr. Gorman's position with respect to transition costs in his surrebuttal testimony.

VI. PURCHASE ACCOUNTING ENTRIES AND SECTION 9-230

Q. In your rebuttal testimony (Joint Applicants Ex. 7.0, at 21-24), you recommended modifications to certain conditions recommended by Staff witnesses Messrs. Kahle and McNally concerning push-down accounting based upon recent changes made by

261 **the SEC. Did Messrs. Kahle and McNally agree with your proposed modifications**
262 **to their recommended conditions?**

263 A. Yes. Both Staff witnesses Mr. Kahle (ICC Staff Ex. 11.0, at 4) and Mr. McNally (ICC
264 Staff Ex. 13.0, at 4) agreed with my recommended language for these conditions.
265 Accordingly, I believe that this issue is resolved in this proceeding.

266 **Q. Mr. McNally continues to recommend that the Joint Applicants be required to**
267 **present a study of the appropriate post-merger capital structures for the Gas**
268 **Companies prior to filing their next rate cases or, in the alternative, make**
269 **commitments regarding the WEC Energy Group's common equity ratio in order to**
270 **satisfy the requirements of Section 9-230 of the Act (ICC Staff Ex. 13.0, at 4-6).**
271 **What is the Joint Applicants' response to Mr. McNally's position?**

272 A. The Joint Applicants respectfully continue to disagree that Section 9-230 of the Act
273 applies to this proceeding and the Commission's approval of the proposed
274 Reorganization, for the reasons stated in my rebuttal testimony. However, while they do
275 not believe it to be necessary, in order to narrow the issues in this proceeding and in a
276 continuing effort to reach agreement with Staff on the Commission's approval of the
277 proposed Reorganization, the Joint Applicants will agree to perform the study as
278 proposed by Mr. McNally in his direct testimony prior to the Gas Companies filing their
279 next rate cases. Accordingly, the Joint Applicants agree to the following language for a
280 condition on this issue:

281 Peoples Gas and North Shore shall perform a study of their appropriate
282 post-merger capital structures, similar to those ordered in Docket Nos. 11-
283 0721 and 12-0001. Commonwealth Edison Co., Order, ICC Docket No.
284 11-0721, 134 (May 29, 2012); Ameren Illinois Co., Order, ICC Docket
285 No. 12-0001, 121 (September 19, 2012). The study, to be performed by
286 the Gas Companies under the guidance of the ICC's Finance Department

287 Manager, should commence no later than six months prior to, and be
288 presented to the Commission in final form at the time of or before, the
289 filing of the Gas Companies' next rate case.

290 **VII. CONCLUSION**

291 **Q. Does this conclude your surrebuttal testimony?**

292 A. Yes.